



By Electronic Mail (<http://comments.cftc.gov>)

November 21, 2013

Ms. Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Certification of Designated Contract Market and Swap Execution Facility Available-to-Trade Determinations for Interest Rate and Credit Default Swaps

Dear Ms. Jurgens:

The Financial Services Roundtable¹ (“FSR”) appreciates the opportunity to submit comments to the Commodity Futures Trading Commission (the “Commission”) with respect to the certification under sections 37.10 and 40.6 of the Commission’s regulations (the “Regulations”) of the “made- available-to-trade” (“MAT”) determinations submitted to the Commission by each of Javelin SEF, LLC (“Javelin”), trueEX, LLC (“trueEX”), TW SEF LLC (“TW SEF”) and MarketAxess SEF Corporation (“MarketAxess” and, collectively, the “Relevant Facilities”) with respect to certain interest rate swaps (“IRS”) and credit default swaps (“CDS”) listed on the Relevant Facilities.

We have commented on a large number of Commission proposals relating to the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, including the Commission’s proposals relating to “core principles” and other requirements for swap execution facilities² and the process for a designated contract

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Office and other senior executives nominated by the CEO. FSR member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

² See Letter from The Financial Services Roundtable to David A. Stawick, CFTC Secretary, *Core Principles and Other Requirements for Swap Execution Facilities*, March 8, 2011. Available at http://www.fsround.org/fsr/policy_issues/regulatory/pdfs/pdfs11/RoundtableCFTCSEFLetter--FinalDraft.pdf

market (“DCM”) or swap execution facility (“SEF”) to make a swap available to trade (the “MAT Determination Letter”).³ We appreciate the opportunity to offer further perspective on these important matters.

Summary of Comments

For the reasons set forth in this letter, the Relevant Facilities’ MAT submissions should not be certified unless and until the Commission has (without limitation):

- thoroughly reviewed and approved the Relevant Facilities’ registration applications;
- thoroughly reviewed each of the Relevant Facilities’ rulebooks and confirmed that all existing inconsistencies between the provisions of those rulebooks (or the application of such facilities’ rules and procedures) and the relevant provisions of the CEA or the Regulations have been resolved and that no other inconsistencies exist;
- verified that the Relevant Facilities possess the operational capacity to fully support trading in all swaps covered by their MAT determinations;
- adequately tested the new infrastructure and processes established by the Relevant Facilities and determined that all necessary linkages between the facilities and the various futures commission merchants (“FCMs”), clearinghouses and swap data repositories (“SDRs”) have been adequately established and are fully operational and that all of the Relevant Facilities listing any swap covered by a MAT determination are capable of executing the swap on the relevant SEF’s Order Book; and
- confirmed that the MAT submissions are fully compliant in all respects with the requirements set forth in Regulation 37.10 and related guidance.

Importance of Adequate Commission Oversight

As we noted in our MAT Determination Letter, the designation of a swap as “made available to trade” has crucial significance in establishing when swaps become subject to the trade execution requirements of Title VII. In particular, if a swap is subject to the mandatory clearing requirement and has been made available to trade on a SEF or DCM, it must be traded on such facility unless an exemption applies. Market participants

³ See Letter from The Financial Services Roundtable to David A. Stawick, CFTC Secretary, *Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade*, February 13, 2012. Available at http://www.fsround.org/fsr/policy_issues/regulatory/pdfs/pdfs12/CFTCMadeAvailabletoTrade.pdf.

that cannot rely on an exemption will have to trade on a SEF or DCM or forego the transaction.

Furthermore, premature application of the trade execution requirement to a swap has the potential to compromise rather than advance the goals of Title VII. If a facility determines that it has made a swap available to trade but the platform it offers is not conducive to such trading, the swap may become *unavailable* to many market participants.⁴

Given the potential negative consequences to the market, we believe that the Commission must exercise robust oversight with respect to the certification of MAT determinations submitted by SEFs and DCMs, particularly with respect to the Relevant Facilities' MAT self-certifications since they are the first MAT determinations submitted to the Commission and therefore present novel and complex issues that may require more than the additional 90-day review period afforded by the stays instituted by the Commission's Division of Market Oversight ("DMO"). Absent adequate oversight, the Commission would effectively delegate undue discretion in this matter to the Relevant Facilities (and other SEFs or DCMs that may submit MAT determinations in the future), which have no obligation or incentive to act in the best interests of the market as a whole and which may have incentives to submit as many MAT determinations as possible to maximize the number of swaps subject to mandatory trade execution under section 2(h)(8) of the CEA.

In its final rules on the process for a DCM or SEF to make a swap available to trade (the "MAT Determination Rules"),⁵ the Commission stressed the importance of its own oversight role, indicating that the procedures for requesting Commission approval of a new rule under Regulation 40.5 and the self-certification procedures set forth in Regulation 40.6 strike the proper balance between providing "flexibility" to DCMs and

⁴ If a SEF submits a MAT determination for a swap that it offers for trading on a platform that is not conducive to such trading, and if no other SEF offers that swap for trading, then the certification of that MAT determination would effectively require market participants to execute the swap on an inadequate platform. Even if the SEF's platform is conducive to such trading, market participants wishing to enter into the swap after such certification would need to complete their membership applications for the SEF on an expedited basis, limiting their ability to negotiate more favorable terms or rates with the SEF. Moreover, where only a limited number of SEFs offer a swap for which a MAT determination has been certified, market participants that are unable to establish adequate connectivity with such SEFs will be precluded from trading such swaps, even where the platforms for trading such swaps are adequate.

⁵ See Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 Fed. Reg. 33606 (June 4, 2013).

SEFs to make an initial MAT determination “while allowing for appropriate Commission review and regulatory oversight.”⁶

In fact, the Commission revised the proposed rules by removing the catchall for “any other factor” from the list of factors to be considered by a SEF or DCM in making a MAT determination in order to provide market participants with a “more precise set of factors from which a swap may be made available to trade, thereby improving clarity, lessening uncertainty . . . and promoting a more consistent determination process.”⁷ While the Commission declined to establish objective threshold criteria for evaluating whether (and to what extent) such factors are present with respect to a swap, it stressed that as centralized trading develops and the Commission gains experience in oversight of swap markets, it might consider adopting objective criteria in a future rulemaking.

The Commission’s apparent concerns over delegating excessive discretion to DCMs and SEFs are particularly appropriate in the context of the Relevant Facilities’ MAT submissions since they are the first such submissions received by the Commission and, given the absence of objective criteria at this time, may present misleading or incomplete data in support of the six MAT determination factors.

Additional Time May be Needed for Adequate Review

In the release accompanying the MAT Determination Rules, the Commission indicated that a review period of up to 100 days for self-certified MAT determinations (the initial 10-day review period plus the 90-day stay) may be particularly necessary for “initial” MAT determinations, since these first determinations are the most likely to present novel and complex issues that will warrant significant review.⁸ However, given the various obstacles and uncertainties noted below, even this extended review period may be insufficient for the Relevant Facilities’ initial MAT submissions.

Since the 90-day stays instituted by DMO on the Relevant Facilities’ MAT submissions expire in January 2014 (at which point the Relevant Facilities’ MAT determinations will be deemed certified, absent any objection from the Commission) and since market participants will be required to comply with the trade execution requirement for a swap beginning 30 days after the MAT determination for that swap is deemed approved or certified, market participants will, absent further action by the Commission,

⁶ *Id.*, at 33610.

⁷ *Id.*, at 33613.

⁸ *Id.*, at 33610.

be required to comply with mandatory trade execution for the swaps covered by such MAT determinations beginning as early as February 2014.

Market participants may not be capable of transferring their existing trading in a swap onto a SEF or DCM by February 2014, particularly since there does not seem to be a process contemplated for notifying market participants of either the MAT submission or the MAT determination (other than posting the submission and, in the case of the Commission, the determination on the Commission's and the facility's respective Websites).

Operational Obstacles

Even where a market participant knows about the MAT determination on the first day, certain operational considerations must be addressed in order to establish adequate connectivity with a DCM or SEF. Implementing these new infrastructure standards and procedures necessary to comply with the trade execution requirement may take longer than the three months currently available under DMO's stays. Certain operational considerations are set forth below:

- *Linkage of Swap Counterparties to SEF or DCM:* Liquidity providers need to develop adequate connectivity and to obtain trading access to a SEF or DCM. Specifically, swap dealers, major swap participants and other liquidity providers must establish additional connectivity to interface with the DCM or SEF in order to share pricing and to establish the associated pre-trade and execution control environment. Additionally, smaller market participants may need more time than others to connect to a SEF or DCM offering an actively traded swap.
- *Linkage of SEF or DCM to Clearinghouse and Futures Commission Merchant:* In order to provide clearing certainty pre-trading, a SEF must know, at the time of execution, which entity will clear the swap and must be connected to it, either directly or through the clearinghouse. Real-time connectivity between DCMs, SEFs, FCMs and clearinghouses is vital to enabling parties to cease trading in emergencies and to prevent so-called "limit fragmentation" (which could result from splitting a clearing limit across several execution or clearing venues). Building and testing this infrastructure and linking it to a new SEF or DCM requires time.
- *Linkage of SEF, DCM and Swap Counterparties to Swap Data Repository:* Additionally, compliance with a SEF or DCM's obligations under Parts 43 and 45 of the Regulations to report swaps executed on or pursuant to the rules of a SEF or DCM to an SDR requires that the DCM or SEF be connected to the SDR. Moreover, while DCMs and SEFs will report transactions executed on their facility, market participants may still be responsible for reporting individual transactions (e.g., if the

DCM or SEF fails to report) or for providing aggregate portfolio data to regulators, which will require that they be connected to DCMs and SEFs. Timing and distribution of Unique Swap Identifier, Unique Product Identifier and Legal Entity Identifier codes will have to be coordinated and DCMs and SEFs will require links into the infrastructure to ensure that they are compatible with it. Establishing these links will take time and will require testing.

- *Ability of SEF to List Required Transactions on an Order Book.* The Commission’s final rules on core principles and other requirements applicable to SEFs (the “SEF Rules”)⁹ require SEFs to execute “Required Transactions” (*i.e.*, transactions involving a swap that is subject to the trade execution mandate) on an Order Book or by a Request for Quote System (“RFQ”) that operates in conjunction with an Order Book. Therefore, prior to certifying a MAT determination with respect to a swap listed on a SEF (thereby rendering the swap a Required Transaction), all SEFs listing the swap must be able to execute the swap on an Order Book.

The Relevant Facilities’ MAT submissions should not be certified unless and until the Commission has (1) thoroughly tested the new infrastructure and processes established by such facilities, (2) concluded that all necessary linkages between the facilities and the various FCMs, clearinghouses and SDRs have been adequately established and (3) verified that all Relevant Facilities listing any swap covered by any such MAT determination are capable of executing the swap on an Order Book.

The Commission’s removal of another factor (in addition to the “any other factor” catchall discussed above) from its list of factors to be considered in a MAT determination increases the need for the Commission to thoroughly investigate and ascertain the capacity of the Relevant Facilities to support the increased trading that is likely to follow a MAT determination. In the final MAT Determination Rules, the Commission removed from its proposed list of factors to be considered in a MAT Determination “whether a SEF’s or DCM’s trading facility or platform will support trading in the swap,”¹⁰ reasoning that, “in light of the listing requirement, this factor is redundant.” However, as the Commission acknowledged in the same paragraph, this proposed factor contemplated more than merely whether the swap is listed on a SEF or DCM. Given that the Relevant Facilities did not discuss in detail their operational capacity to support trading in the swaps covered by their MAT Determinations, other than to state that their facility lists the

⁹ See Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33476 (June 4, 2013).

¹⁰ 78 Fed. Reg., at 33613.

swap, it is vital that the Commission verify such capacity prior to certifying the MAT Determinations.

Provisional Registration and SEF Rules

Each of the four Relevant Facilities is temporarily registered with the Commission as a SEF, but only trueEX operates as both a SEF and a DCM. The Relevant Facilities' MAT submissions should not be certified unless and until the Commission has thoroughly reviewed each of the Relevant Facilities' rulebooks and registration applications and confirmed that the facilities' rulebooks and proposed activities are in compliance with the core principles and other requirements applicable to SEFs set forth in the CEA and the Regulations.

In the SEF Rules, the Commission extended the proposed 365-day sunset date for temporary registration to two years from the effective date of the SEF Rules, citing the projected number of temporary SEF registrations and the resource constraints faced by the Commissions and acknowledging that the Commission may therefore be unable to complete its registration reviews, enable SEFs to remedy any identified deficiencies and ultimately grant or deny full registration for all of the SEF applicants within the proposed 365-day period. In other words, the Commission effectively acknowledged that, due to resource constraints, even a deadline of September 2014 would not provide adequate time to review SEF registration applications.

Additionally, DMO issued guidance on September 30, 2013 (the "September Guidance") indicating that "some SEF rulebooks contain provisions which appear to be inconsistent with the Commission's regulations."¹¹ For instance, the September Guidance notes that some SEFs' rulebooks prohibit investment and/or trading advisors from aggregating orders for different accounts to satisfy block trade minimum requirements even though Regulation 43.6(h)(6) would permit such aggregation, and instructs SEFs to include exceptions in their rulebooks for such persons. Javelin's rulebook does not include such an exception.¹²

The September Guidance also states that Core Principle 8 requires SEFs to adopt rules to provide for the exercise of emergency authority, including the authority to liquidate or transfer open positions or to suspend trading, that such rules should apply

¹¹ See Division of Market Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities (Sep. 30, 2013).

¹² While Javelin's Rule 514 provides that only "Designated Swap Brokers" and "Designated Market Makers" may place bunched orders on Javelin, these defined terms do not include investment or trading advisors.

only in an “emergency” (as defined in Regulation 40.1) and that such emergency actions must be carried out pursuant to Core Principle 8 and Part 40 of the Regulations, which requires that rules implemented to respond to an emergency be filed with the Commission prior to implementation, if practicable, but in any case within 24 hours after implementation. Javelin’s Rule 203 provides that, in an Emergency (which term is defined consistently with Regulation 40.1), Javelin will approve and apply temporary rules and procedures, which may include liquidating or transferring open positions or suspending or limiting trading, and that if Javelin takes emergency actions, it will “promptly notify” the Commission of such actions. However, Javelin’s rules do not require that the emergency rules themselves (as opposed to a mere notice) be filed with the Commission within 24 hours or at any time for that matter. Moreover, the Commission issued additional guidance on November 15, 2013 (the “November 15 Guidance”) indicating that certain SEFs are assuming greater discretion to take emergency action than is contemplated by the Regulations by defining “emergency” more broadly than it is defined in the Regulations. Both the Javelin and the trueEX MAT submissions include within this definition a catchall for “any other unusual, unforeseeable or adverse circumstance as determined by [the Relevant Facility].”¹³ The November 15 Guidance stresses that the “emergency” definition in a SEF’s rulebook “must be consistent with, and not broader than, the Commission’s definition.”

The September Guidance also cites the time delay requirement in Regulation 37.9(b), which provides that a SEF must require that a broker-dealer who seeks to either execute against its customer’s order or to execute two of its customers’ orders against each other through the SEF’s Order Book, following some form of pre-arrangement or pre-negotiation of such orders, be subject to at least a 15 second time delay between the entry of those two orders into the SEF’s Order Book, “such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction . . . is submitted for execution.” The September Guidance reminds SEFs that this time delay requirement applies whenever there is some form of pre-execution communications. TrueEX’s Rule 524(c) provides that, where parties engage in pre-execution communications with regard to transactions executed on the trueEX platform and one party (the first party) wishes to be assured that a particular person (the second party) will take the opposite side of the order, the first party’s order will be displayed in a public session to give other members the opportunity to participate in the order and that the second party’s order will not be matched against the first party’s order until a period of 5 seconds has elapsed from the time of entry of both party’s orders. This 5 second time delay is considerably shorter than the required 15 second delay.

¹³ TW SEF’s rulebook contains a similar (but not identical) catchall in its “emergency” definition.

Similarly, trueEX's Rule 520(a)¹⁴ provides that no person may knowingly assume on its own behalf or on behalf of a customer account the opposite side of a customer's order except where the person has obtained either a prior written blanket consent or transaction-specific consent from the customer and "waits for a reasonable period of time, which shall be presumed to be not less than 5 seconds, after the initial Order is submitted before submitting the opposite side Order." This rule falls short of the requirement set forth in Regulation 37.9(b) since it gives the broker discretion to determine what constitutes a "reasonable period of time." Moreover, the presumption that such period be at least 5 seconds falls short of the 15 second requirement in the Regulation. The mere fact that trueEX's rule requires customer consent does not bring this rule into compliance with the Regulation.

Given that the Commission has already identified several inconsistencies between the SEF Rules and certain SEF rulebooks, at least some of which are present in Javelin's and trueEX's rulebooks, the Relevant Facilities' MAT submissions should not be certified unless and until the Commission has thoroughly reviewed each of the Relevant Facilities' rulebooks and confirmed that such inconsistencies have been resolved and that no other inconsistencies exist.

Moreover, the Commission issued further guidance to SEFs on November 14, 2013 (the "November 14 Guidance") , noting that the "enablement mechanisms" established by certain SEFs unduly restricts the ability of certain market participants to interact on the SEFs' trading systems or platforms for "Intended-To-Be-Cleared Swaps" ("ITBC Swaps").¹⁵ The November 14 Guidance emphasizes that such restrictions are inconsistent with the impartial access requirement set forth in the CEA (specifically, SEF Core Principal 2) and in Regulation 37.202, which require a SEF to allow its market participants to fully access its trading systems or platforms with respect to ITBC Swaps. In addition, the November 14 Guidance notes that limiting access to a SEFs' trading systems or platforms to certain types of eligible contract participants ("ECs"), as some

¹⁴ See also trueEX's Rule 518(b)(i) which permits a Participant or Authorized Broker to knowingly trade against a Customer Order for its own account or an account over which it has discretionary trading authority only if the Customer Order has first been exposed on trueEX's platform for a minimum of 5 seconds.

¹⁵ For instance, the November 14 Guidance notes that "some SEFs establish that any two market participants may only execute an ITBC Swap on a SEF's trading systems or platforms if the market participants have a pre-execution agreement, such as a breakage agreement," while others SEFs limit the ability to stream indicative bids and offers to a subset of market participants.

SEFs have done, is inconsistent with the impartial access requirement of Core Principle 2.¹⁶

Similarly, the November 15 Guidance notes that some SEF participation agreements or rulebooks contain a requirement that in order to access the SEF, an ECP must consent to the SEF using data it collects from the ECP (including market data, proprietary data and personal data, for business and marketing purposes). The Guidance notes that such provisions are inconsistent with Regulation 37.7, which clearly states that a SEF “shall not use for business or marketing purposes any proprietary data or personal information it collects or receives, from or on behalf of any person, for the purpose of fulfilling its regulatory obligations” unless it receives consent, and that a SEF must not condition access to its market(s) or services on a person’s consent to the SEF’s use of such data or information for such purposes.

Given that the Commission continues to identify significant inconsistencies between the operations and procedures adopted by of certain SEFs and the Core Principles applicable to SEFs, the Relevant Facilities’ MAT submissions should not be certified unless and until the Commission has concluded that such inconsistencies have been resolved and that no further inconsistencies exist.

Inadequate MAT Submissions

In addition to the concerns raised above regarding the importance of thoroughly testing a SEF’s new infrastructure and procedures and reviewing a SEF’s registration application and rulebook prior to certifying the SEF’s MAT determination, the MAT submissions themselves are not fully compliant with the requirements set forth in Regulation 37.10.

Failure to Consider Application of Data to Each Swap in a Group

While the MAT Determination Rule permits SEFs and DCMs to submit determinations for a group, category, type or class of swap, it requires the SEF or DCM to “address, in its submission, the applicable determination factor or factors apply to all of the swaps within that group, category, type or class.”¹⁷ In some cases, the Relevant Facilities’ MAT submissions address a factor with respect to certain swaps but not others. The TW SEF submission, for instance, covers two different series each within two CDS

¹⁶ The November 14 Guidance notes, as an example, that certain SEFs provide access to an ECP that is either a liquidity provider or a liquidity taker, but not to an ECP that is both a liquidity provider and taker.

¹⁷ 78 Fed. Reg., at 33611.

indices—specifically, the “Investment Grade” and “High Yield” series of CDX and the “Europe” and “Crossover” series of iTraxx. To support the claim that one of these factors—the presence of ready and willing buyers and sellers—is satisfied, TW SEF’s submission provides some broad information as to the number of swap dealers generally providing liquidity in these indices and the number of institutional investors participating at certain times in the market for these products and notes that “all of the indices on [its] MAT list have actively traded in the last month [prior to the submission].” However, the submission provides year-to-date volume only for the two series of CDX and not for either series of iTraxx.

Similarly, the Javelin submission groups the swaps subject to its MAT determination into three Categories based on currency and floating rate index. Within each Category, Javelin further considers three maturity buckets (*i.e.* up to 5 years, between 5 and 10 years and between 10 and 31 years). As a preliminary matter, we believe that grouping swaps with maturities ranging from 10 and 31 years within a single bucket renders the data provided as to each maturity bucket (within each swap Category) overly broad. Moreover, the Javelin submission asserts that since swaps with spot and forward dates are “mathematically related,” the factors considered with respect to swaps with spot effective dates (Class 1 swaps) “directly carry” to the attributes of swaps with forward effective dates (Class 2 swaps), rendering it unnecessary to consider each class separately when applying the six factors.¹⁸ On this basis, the Javelin submission considers each factor separately with respect to each of the three Categories (USD/LIBOR, Euro/Euribor and GBP/LIBOR) and each maturity bucket but not with respect to each Class of swaps. Since spot and forward starting swaps are distinct products with distinct characteristics, the Javelin submission should address each factor separately with respect to each Class of swaps within each maturity group and Category. Moreover, even where multiple swaps share the foregoing characteristics (*i.e.*, currency, floating rate index, maturity and effective date type), they may differ in other material respects. Therefore, the Javelin submission should be revised to address the application of each factor to particular swaps (within subcategories of each Category, maturity bucket and Class) sharing certain additional characteristics, such as floating rate payment, reset date, payment frequency, day count conventions and trade type.¹⁹

¹⁸ Swaps within each Category and maturity bucket are further divided into two Classes—Class 1 for swaps with spot effective dates and Class 2 for swaps with forward effective dates.

¹⁹ The Javelin submission provides that its MAT determination covers swaps with various reset dates, payment frequencies, day count conventions and trade types, but does not separately consider each factor with respect to each permutation of these characteristics.

While the trueEX MAT submission provides substantial detail (in Exhibit A) as to the types of IRS contracts that are subject to the determination (listing the currency, tenors, payment and reset frequencies, floating rate indices, types of effective dates, relevant series and trade types of the covered swaps), certain data in the submission is presented with respect to all contracts covered by the determination or, more generally, USD-denominated IRS generally. For instance, the trueEX submission draws conclusions as to the sufficiency of trading volume in the contracts covered by the MAT determination based on data pertaining to the trading volume of all cleared USD-denominated IRS. Additionally, while trueEX asserts in its submission that the majority of the liquidity in IRS is concentrated in certain contracts with whole year tenors corresponding to the tenors of the contracts subject to the MAT determination, it provides data on the average IRS trade size and trade frequency (rather than specifically on IRS with those particular whole year tenors) and concludes that, since the contracts with those particular tenors make up the majority of IRS liquidity, the covered swaps are available to trade. Unless trueEX amends its submission to present data separately for each type of swap, it is difficult to verify whether this conclusion is warranted.

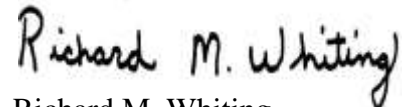
The MarketAxess MAT submission also groups swaps based on the relevant CDS index, series and tenor but reports data for three of the six determination factors (*i.e.*, ready and willing buyers and sellers, number and types of market participants and number of resting firm and indicative bids and offers) with respect to all CDS subject to the determination as a whole. Additionally, the MarketAxess submission does not consider the bid/ask spread factor set forth in the MAT Determination Rules. While SEFs are not required to consider all six factors in making a MAT determination, the absence of any explanation for this exclusion may suggest that the relevant data militates against certification.

Amendments to Javelin MAT Submission

The fact that Javelin submitted an amended MAT determination to the Commission on October 31, 2013, in which it significantly narrowed the scope of its original determination, indicates that there is considerable doubt as to the proper scope of Javelin's determination. The amended submission reduces the upper limit of the maturities covered by the MAT determination from 51 to 31 years (as well as the lower range, from one month to one day). Additionally, for swaps with forward effective dates, the upper limit for such effective dates has been reduced in the amended submission from over 50 years to 10 months. Finally, while the original submission included a third Class for swaps with variable notional amounts, the amended submission eliminates Class 3 altogether such that only swaps with a fixed notional are covered by the determination. Given Javelin's apparent uncertainty regarding the proper scope of its own MAT determination, it is particularly important that the Commission exercise robust oversight of Javelin's MAT submission prior to its certification.

We appreciate the opportunity to comment on the certification of the Relevant Facilities' MAT determinations. If you have any questions about this letter or any of the issues raised by our comments, please do not hesitate to call or email me or my colleague Robert Hatch at (202) 589-2429 or Robert.Hatch@fsroundtable.org.

Sincerely,

A handwritten signature in black ink that reads "Richard M. Whiting". The signature is written in a cursive, slightly slanted style.

Richard M. Whiting
Executive Director and General Counsel
The Financial Services Roundtable
(202) 589- 2413